

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

WILLIE DOW,

Plaintiff,

-v-

KAPPA KAPPA PSI FRATERNITY, et al.,

Defendants.

Case No. 3:07-CV-399

Judge Thomas M. Rose

**ENTRY AND ORDER FINDING KAPPA KAPPA PSI'S MOTION TO
DISMISS (Doc. #3) MOOT**

This matter arises from the association of Plaintiff Willie Dow ("Dow") with Defendant Kappa Kappa Psi Fraternity ("Kappa Kappa Psi"). Dow pledged Kappa Kappa Psi while an undergraduate student at Central State University. Kappa Kappa Psi is a fraternal organization for Central State University's Band.

Now before the Court is Kappa Kappa Psi's Motion To Dismiss. (Doc. #3.) Rather than respond to this Motion To Dismiss, Dow filed an Amended Complaint. Kappa Kappa Psi has not replied, other than to Answer Dow's Amended Complaint, and the time to do so has run. Therefore, Kappa Kappa Psi's Motion To Dismiss is ripe for decision.

Dow's original Complaint alleges that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 which requires complete diversity of citizenship among the parties. Kappa Kappa Psi moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) due to the lack of complete diversity of citizenship because Dow alleges that he is a resident of Ohio and that several of the defendants named in his original Complaint are residents of Ohio.

Dow's response to Kappa Kappa Psi's Motion To Dismiss was an Amended Complaint

(doc. #6) which no longer names any residents of Ohio as Defendants.¹ Dow is named the Plaintiff in the Amended Complaint. Kappa Kappa Psi Fraternity, National Honorary Band Fraternity Inc, Headquarters Chapter of Stillwater, Oklahoma; its statutory agent; and Jane and John Does with unknown addresses are the only named Defendants. Therefore, complete diversity of citizenship among the Parties exists on the face of Dow's Amended Complaint.

Because Dow has filed an Amended Complaint and complete diversity of citizenship appears on the face of Dow's Amended Complaint, Kappa Kappa Psi's Motion To Dismiss due to the lack of complete diversity of citizenship in Dow's original Complaint is MOOT.

DONE and ORDERED in Dayton, Ohio this Sixth day of March, 2008.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT

JUDGE

Copies furnished to:

Counsel of Record

¹Dow has also filed a Notice of Dismissal in which he dismisses those named in his Complaint who allegedly have Ohio residences. (Doc. #7.)